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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )

)  
Amendment of the Commission's Rules to )  
Permit Flexible Service Offerings in the )  
Commercial Mobile Radio Services )

WT Docket No. 96-6

To: The Commission

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**COMMENTS OF BELL SOUTH**

BellSouth Corporation ("BellSouth"), by its attorneys, hereby submits these comments in response to the Commission's *First Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 96-6, FCC 96-283 (released August 1, 1996), *summarized*, 61 Fed. Reg. 43,721 (1996) ("*Further Notice*"). In the *Further Notice*, the Commission has asked for comment on the appropriate regulatory treatment of Commercial Mobile Radio Service ("CMRS") carriers who provide fixed services.

**DISCUSSION**

The overriding issue raised in the *Further Notice* is of what form of regulation, if any, should be applied to CMRS licensees providing fixed services — other than ancillary, auxiliary, and incidental fixed services — over CMRS spectrum.<sup>1</sup> BellSouth agrees with the Commission's previous conclusion in this proceeding not to discourage the development of fixed wireless services

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<sup>1</sup> *Further Notice* at ¶ 48. BellSouth agrees with the Commission's decision not to alter the regulatory treatment of licensees offering the types of ancillary, auxiliary, and incidental fixed services that have been offered by CMRS providers under the Commission's prior rules. *See id.*

by subjecting carriers to multiple layers of regulation.<sup>2</sup> Accordingly, BellSouth supports the Commission's presumption that CMRS licensees offering fixed service over CMRS spectrum should be regulated as CMRS.<sup>3</sup> As discussed herein, however, BellSouth opposes the Commission's proposal to establish new factors to support or rebut the presumption.<sup>4</sup>

**I. BellSouth Supports the Commission's Presumption that CMRS Licensees Offering Fixed Service Over CMRS Spectrum Should Be Regulated as CMRS and Believes that No New Guidelines Governing Those Offerings Are Required**

In the *Further Notice*, the Commission stated that a uniform approach to determine the regulatory treatment of various types of fixed offerings is premature, and sought comment on whether additional guidelines are necessary to determine when fixed service offerings fall within the scope of CMRS regulation.<sup>5</sup> BellSouth believes that there is no need for micro-management of CMRS fixed service offerings and that no new guidelines governing those offerings are required. Instead, BellSouth supports the Commission's presumption that CMRS licensees offering fixed service over CMRS spectrum should be regulated as CMRS.

Rather than creating additional guidelines, the Commission should act in a manner consistent with the language adopted by Congress in amending Section 332 of the Communications Act.<sup>6</sup> Specifically, the Commission should regulate any fixed wireless service provided by a CMRS provider as CMRS until "such service is a replacement for land line telephone exchange service for

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<sup>2</sup> See *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96-6, *Notice of Proposed Rulemaking*, 11 F.C.C.R. 2445, 2449 (1996) ("Notice").

<sup>3</sup> See *Further Notice* at ¶ 53.

<sup>4</sup> See *id.* at ¶¶ 54-55.

<sup>5</sup> *Id.* at ¶¶ 46-47.

<sup>6</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 393 (1993) ("Budget Act").

a substantial portion of the telephone land line exchange service within such State.”<sup>7</sup> If the Commission determines that a CMRS provider is offering a service which is being used as a substitute for local exchange service by a substantial portion of the public within its service area, the Commission should consider waiving preemption of state regulation of the service. However, the Commission should continue to preempt state regulation of other services provided by CMRS providers that are not replacements for landline telephone exchange service.

**II. The Nature of the Service Package Offering Itself, and not the Status of the Entity Offering the Package, Should Determine the Proper Regulatory Treatment of the Service Offering**

To determine whether a fixed wireless service provided by a CMRS provider should be regulated as CMRS, the Commission has asked for comment on various interpretations of the phrase “commercial mobile service” as defined in 332(d)(1) of the Communications Act,<sup>8</sup> and “mobile service” as defined in Section 3 of the Act.<sup>9</sup> For example, the Commission has asked whether the

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<sup>7</sup> 47 U.S.C. § 332(c)(3); *see* BellSouth Comments in WT Docket No. 96-6 at 4 (filed Mar. 1, 1996).

<sup>8</sup> 47 U.S.C. § 332(d)(1). The term “commercial mobile service” means “any mobile service (as defined in Section 3(n) [Section 153(27)]) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission.” *Id.*

<sup>9</sup> 47 U.S.C. § 153(27). The term “mobile service” means “a radio communication service carried on [sic] between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, *and includes* (1) both one-way and two-way radio communication services, (2) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (3) *any service for which a license is required in a personal communications service* established pursuant to the proceeding entitled “Amendment to the Commission’s Rules to Establish New Personal Communications Services” (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.” 47 U.S.C. § 153(27) (emphasis added).

fact that the definition of “mobile services” contains a reference to PCS means that all service provided through a PCS license would be regulated as mobile.<sup>10</sup>

In addition, several parties argued during a previous phase of this proceeding that regulatory parity for similarly situated CMRS providers means that all services provided through a license for a CMRS service, not just a PCS license, come within the definition of “mobile service,” while the Commission suggests that PCS may simply be one example of mobile service rather than a limitation on the types of service falling under the definition.<sup>11</sup> The Commission has also inquired as to whether the primary service to which the spectrum is allocated, *e.g.*, PCS, should dictate the type of regulation to which all service providers in the band will be subject, regardless of the attributes of the actual service being provided.<sup>12</sup>

Underlying each of these questions is the general issue whether the *status of the entity* offering a particular fixed wireless service package should determine the manner of regulation applied to service offering. BellSouth believes that it should be the *nature of the package — the service offering itself* — and not the status of the entity offering the package, which determines the proper regulatory treatment of the service offering. At the same time, the service would remain classified as “mobile.” Accordingly, BellSouth agrees with the Commission that these regulatory issues require resolution on a case-by-case basis.<sup>13</sup>

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<sup>10</sup> *Further Notice* at ¶ 49.

<sup>11</sup> *See id.* at ¶ 49.

<sup>12</sup> *See id.* at ¶ 52.

<sup>13</sup> *See id.* at ¶ 53. Comment is also sought on the extent to which services provided under separate licenses or by separate entities may be relevant to the regulatory status of a particular fixed service offering provided under a given license. *Id.* at ¶ 55. In other words, the Commission is attempting to determine whether the offering by affiliates in the same market of the same or different services pursuant to the same or different licenses alters the regulatory scheme. BellSouth believes that, as above, it should be the nature of the service package offering which determines the proper

As previously noted, the case-by-case determination should be made based upon Section 332(c)(3), whereby the Commission should regulate any fixed wireless service provided by a CMRS provider as CMRS until the wireless fixed service being challenged substantially competes within the state with the service offering of a wireline entity. The presumption that any wireless service provided under a CMRS provider's license would be considered to fall within the definition of CMRS, and thus be regulated as CMRS, would be rebutted if a state could demonstrate to the Commission that the service being provided does not meet the definition of CMRS for a particular offering. Nevertheless, BellSouth submits that even if the Commission determines that a particular service package is deemed competitive with wireless local exchange service and may be regulated by the state, the CMRS entity does not automatically lose its CMRS regulation status. Instead, only the particular CMRS service package would be subject to state regulation.

**III. BellSouth Opposes Defining New Factors to Rebut the Presumption that CMRS Licensees Offering Fixed Service Be Regulated as CMRS and Recommends Instead Applying the Criteria the FCC Adopted in Implementing Section 332**

The Commission seeks comment on the types of evidence the Commission should evaluate when considering a challenge to a presumption that fixed wireless service provided by a CMRS provider should be regulated as CMRS.<sup>14</sup> Specifically, the Commission has proposed a series of factors that may be presented to rebut the presumption.<sup>15</sup> BellSouth opposes the suggestion that new

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regulatory treatment of the service offering.

<sup>14</sup> *Id.* at ¶¶ 54-55.

<sup>15</sup> The factors set forth for comment include: (1) the relative mobility of mobile stations used in conjunction with the fixed service; (2) whether the fixed service is part of a larger package which includes mobile services or is offered alone; (3) the size of the service area over which the fixed wireless service is provided; (4) the amount of mobile versus fixed wireless over the fixed spectrum; (5) whether the fixed service is offered over a discrete block of spectrum used for mobile services; (6) the degree to which fixed and mobile services are integrated; and (7) whether customers perceive the service to be a fixed service. *Id.* at ¶ 54.

factors be defined and recommends instead that the Commission look to the criteria adopted in the Commission's *CMRS Second Report and Order* in GN Docket No. 93-252<sup>16</sup> which implemented Section 332.

In the *CMRS Second Report and Order*, the Commission examined what states must demonstrate when filing petitions claiming that state rate regulation is appropriate because the commercial mobile radio service is a replacement for landline telephone exchange service for a substantial portion of the telephone land line exchange service provided within the state. The Commission concluded that "we will require the state to provide such information as may be necessary to enable us to determine market conditions prevalent in the state and the range of basic telephone service alternatives available to consumers in the state."<sup>17</sup> BellSouth believes that the Commission should rely solely upon these standards established by the Commission in response to the amendment of Section 332 by the Budget Act in assessing whether the presumption is rebutted.

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<sup>16</sup> *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, *Second Report and Order*, 9 F.C.C.R. 1411 (1994) ("*CMRS Second Report and Order*").

<sup>17</sup> *CMRS Second Report and Order*, 9 F.C.C.R. at 1506. The Commission stated that it would consider the following types of evidence: (1) the number of CMRS providers in the state, the types of services offered by these providers, and the period of time during which these providers have offered service in the state; (2) the number of customers of each such provider and annual revenues and rates of return for each such provider; (3) rate information for each CMRS provider; (4) the extent to which services offered by the CMRS providers that the state proposes to regulate are substitutable for services offered by other carriers in the state; (5) opportunities for new entrants that could offer competing services and an analysis of existing barriers to such entry; (6) specific allegations of fact regarding anti-competitive or discriminatory practices or behavior; (7) evidence demonstrating instances of systematic unjust and unreasonable rates, or rates that are unjustly or unreasonably discriminatory, imposed upon CMRS subscribers; (8) information concerning customer satisfaction with the CMRS services. *Id.* at 1504-05.

**IV. BellSouth Supports the Commission's Tentative Conclusion that the Circumstances, If Any, Under Which a CMRS Provider Should Be Regulated as a LEC Pursuant to Section 251 Do Not Require Resolution in this Docket**

Finally, the Commission has recognized that the circumstances, if any, under which a CMRS provider should be regulated as a local exchange carrier ("LEC") pursuant to Section 251 of the Communications Act<sup>18</sup> are being addressed in a related proceeding<sup>19</sup> and do not require resolution in this docket. The Commission has reached the tentative conclusion that the Section 251 proceeding is separate and, as such, even if a CMRS provider could be considered a LEC in terms of the requirements in Section 251, it still could be considered engaged in the provision of CMRS under Section 332 and thus be exempt from state regulation of intrastate rates.<sup>20</sup> BellSouth supports this tentative conclusion.

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<sup>18</sup> 47 U.S.C. § 251.

<sup>19</sup> *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, *Notice of Proposed Rulemaking*, FCC 96-182, at ¶ 195 (rel. Apr. 19, 1996).

<sup>20</sup> *Further Notice* at ¶ 57.

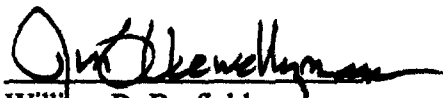
## CONCLUSION

For the foregoing reasons, BellSouth urges the Commission adopt the policies expressed herein.

Respectfully submitted,

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November 25, 1996



**CERTIFICATE OF SERVICE**

I, Phyllis Martin, do hereby certify that I have, on this 25th day of November, 1996, served by hand delivery a copy of the foregoing Comments of BellSouth Corporation in WT Docket No. 96-6 upon the following:

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